

September 11, 2008

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 08-1298

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STRICT

In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

PATRICK MICHAEL FEIGHAN,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

\* \* \* \*

THURSDAY, SEPTEMBER 11, 2008

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

6

matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

8

Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 4:00 PM.

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MASTROIANNI &amp; FORMAROLI, INC.

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Certified Court Reporting &amp; Videoconferencing

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251 South White Horse Pike

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Audubon, New Jersey 08106

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856-546-1100

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A P P E A R A N C E S:

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JAIME KAIGH, ESQUIRE

- and -

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RODNEY D. RAY, ESQUIRE

32 NORTH BLACK HORSE PIKE

6

BLACKWOOD, NEW JERSEY 08012

856-232-3337

7

856-232-4561

ATTORNEYS FOR THE PLAINTIFFS

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10

ROSELLI & GRIEGEL, PC

BY: MARK ROSELLI, ESQUIRE

11

- and -

BY: STEVEN GRIEGEL, ESQUIRE

12

1337 STATE HIGHWAY 33

HAMILTON SQUARE, NEW JERSEY 08690

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609-586-2257

ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: I now reopen  
2 proceedings in the case of Patrick Feighan, docket  
3 number 08-1298.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlies this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of Mr.  
12 Feighan.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Feighan was a resident of Cottage  
18 11 at the farm and alleges certain events that  
19 occurred to him on August 13th, 1997. His  
20 description of those events, in a fairly lengthy  
21 excerpt which I do want to read here for  
22 completeness, begins on page ten, line 13.

23 "All right. Now, what, if anything,  
24 happened that morning with respect to SOG officers in  
25 the farm facility?

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1 "Well, they were still on I don't want  
2 to say lockdown because it was full minimum, still  
3 restricted to our rooms. I didn't actually see the  
4 buses pull up, but you heard the buses pull up and  
5 the SOGs officers would come out and they were doing  
6 a search. I don't know exactly what they were  
7 looking for and they were going through the  
8 cottages."

9 I might add, parenthetically here,  
10 stepping outside of the quote, that because of the  
11 distance involved there is ample evidence in the  
12 record here that when SOG units were dispatched to  
13 the farm, they went either by bus or by van and  
14 that's consistent with the witness' testimony here.  
15 I'm now returning to his testimony.

16 "And I'm sitting on my bunk. I heard  
17 some screaming and I proceeded to look out the window  
18 and I seen two officers dragging an inmate through  
19 the compound pretty much on his face.

20 "Question: Was the inmate black,  
21 white?

22 "Answer: He was African-American, yes.

23 "And the officers that were dragging  
24 this inmate, how were they dressed?

25 "All black with riot gear on.

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1 "And how were they dragging him?

2 "Pretty much on his face and stomach,  
3 up and down.

4 "What, if anything, attracted your  
5 attention to look out the window?

6 "Answer: Screaming.

7 "Question: All right. Then what  
8 happened, if anything, as a result of you looking out  
9 that window?

10 "Answer: One of the other officers  
11 that was with them pointed to our cottage and, I  
12 guess, that was the -- I don't want to assume  
13 anything, but after he pointed to our cottage, he  
14 proceeded to enter our cottage after that.

15 "Question: About how much time passed  
16 between when one of the officers pointed to your  
17 cottage and when the SOG -- is it the SOG officers  
18 that came in?

19 "Yes.

20 "About how much time passed between  
21 when that officer made that gesture and the officers  
22 actually entered?

23 "Probably less than a minute.

24 "Now, what happened when they came in?

25 "Answer: Well, as soon as they came in

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1 through the door, I was in a four man cottage, there  
2 was only two of us standing up. One man that was in  
3 there with me, I don't know his name, he just came  
4 from Southern State or somewhere else. They grabbed  
5 him and slammed his head off the top bunk because  
6 there was two double bunks, slammed his head off the  
7 bunk. So I went to turn to go to my bunk and was  
8 struck three times in my side between my side and my  
9 back with a club, night stick, whatever they had.  
10 And I made it to my bunk and I was restrained in the  
11 back of my neck, pushed down on to my bunk.

12 "Now, where on your body were you  
13 struck?

14 "Probably on my side, in my ribs. You  
15 know, between my back and because I was going to  
16 turn, they had a whole side of my body.

17 "How many times were you struck?

18 "Three.

19 "Did this result in any kind of  
20 bruising or welts or abrasions?

21 "Answer: Yes, sir, it did. I had  
22 pretty nice size welts and bruises on my side.

23 "Question: And you said that something  
24 was done to your neck as well?

25 "Yes, after I was able to get on my



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1 bunk, they came up behind me and I guess to secure me  
2 down, make sure I wasn't going to do anything, held  
3 the night stick on the back of my neck for a few  
4 seconds. Wasn't really long, just enough to, I  
5 guess, make sure I was secure in the bunk.

6 "Question: And when you were struck,  
7 what were you trying to do?

8 "Answer: Get to my bunk.

9 "Were you in the upper or the lower?

10 "The lower bunk, sir.

11 "Did you say anything to these SOG  
12 officers?

13 "No.

14 "Did you make any motions or gestures  
15 toward them or anything like that?

16 "No."

17 There is a series of questions asked by  
18 myself which is not particularly important.

19 Question then resumes at the top of  
20 page 15, also a question from myself.

21 "Did any of the SOG officers say  
22 anything in the course of this intrusion?

23 "It's not that I can really remember  
24 specifically, sir. They were just coming in, pretty  
25 much they were just coming in is what we heard. You

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1 heard slamming doors, everything was just bam, bam,  
2 bam, so fast. They came in and they just came in  
3 blew in the room and everything happened within  
4 seconds."

5                   There is later testimony in the record,  
6 I believe originally from depositions and confirmed  
7 by the witness that there was verbalization directed  
8 at the occupants of this room by the SOG officers,  
9 essentially trash talk of some sort, but nothing that  
10 he recalls specifically.

11                   Now, I've examined the contemporaneous  
12 documentation here which includes the cottages log  
13 for August 13th, Defendant's Exhibit 373, and also  
14 the SOG log for that date which is defense Exhibit  
15 Two. Of course, one of the things important to  
16 determine is if the contemporaneous records reflect  
17 that the SOG officers were in the area of the  
18 cottages, and they do. An entry in the cottage log  
19 for seven o'clock AM indicates that Inmates Posey,  
20 Silla, S-I-L-L-A, and Cooper were transported to  
21 medium facilities at or about seven AM.

22                   That, by the way, is consistent with  
23 the SOG log for that date which also indicates that  
24 at 6:55 AM Posey, Silla and a third inmate, and his  
25 name is not easy to read, but his prison

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1 identification number is identical to that of Mr.  
2 Cooper, were returned from the farm, taken to the  
3 infirmary and cleaned up by the nurses, and then  
4 taken to B Unit. All this movement was done by SOG  
5 Team One.

6               So one SOG team was sent down to the  
7 area at that time for these three extractions. The  
8 time of day being relatively consistent, I believe it  
9 is a very proper inference that the SOG officers in  
10 extracting these people may well have handled them in  
11 the way that was described by Mr. Feighan and, upon  
12 noticing that they were being observed by the  
13 occupants of Cottage 11 and more particularly Mr.  
14 Feighan's area, took a little side trip in there for  
15 the purpose of delivering the message that they did  
16 not enjoy being observed and they expected that there  
17 would be no reports coming from other prisoners of  
18 their activities at that time.

19               It's to Mr. Feighan's credit,  
20 supporting his credibility, when he states that he  
21 can't really recall exactly what was said. It's also  
22 a fair inference that the SOGs as Team One were  
23 delivering that message both verbally and corporally  
24 and, I might add, with no legitimate justification  
25 whatsoever. Thus, I find here a clear example of

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1 excessive force both in fact and within the  
2 contemplation of constitutional law as set forth in  
3 the jury instructions in question.

4               Now, further confirmation of this event  
5 takes place in connection with the activities  
6 regarding Ms. Pepper who was in charge of the Farm  
7 Units. According to the cottage log, Ms. Pepper came  
8 into that area with an escort on or about 10:05 AM  
9 also on the 13th of August. This would have been  
10 after the extractions and after the message  
11 delivering, if I can call it that, by the SOG  
12 officers to Mr. Feighan and his bunk mate.

13               Once again from the contemporaneous  
14 entries here, it is a fair inference that Ms. Pepper  
15 learned of that activity. Maybe she learned of the  
16 fact that the prisoners had been roughly handled in  
17 their transport or perhaps even of the assaults on  
18 Mr. Feighan. I don't think that's critical to the  
19 decision reached here. But in any event, as we now  
20 go to the SOG log we learn that center was about to  
21 disburse two squads, One and Two, to the farm. Ms.  
22 Pepper, learning of this, stated (once again as  
23 reflected in the SOG Log), Ms. Pepper does not want  
24 SOG to respond to the farm.

25               Now, Lieutenant Coughlan testified here

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1 that he was aware of these events personally and  
2 construed that as being that Ms. Pepper, because she  
3 knew that SOG was also involved in other extractions  
4 and movement of prisoners, wanted to reassure Center  
5 and the SOG units that they weren't needed at the  
6 farm and they could tend to other duties.

7 Frankly, in a word that's hog wash.  
8 And I find that Lieutenant Coughlan, at least in this  
9 instance, sought to mislead this tribunal.

10 What is readily apparent here is that  
11 Ms. Pepper is delivering a message that she did not  
12 want the SOGs down there on the Farm as a result of  
13 what had happened earlier that day. There were, of  
14 course, a number of very good reasons for that  
15 including the fact that the Farm was minimum minimum,  
16 and from testimony I've heard up to this point,  
17 wasn't even being searched with the intensity that  
18 was going on inside the walls.

19 But Center and Mr. Coughlan would have  
20 none of that because at 10:36 they disbursed not one,  
21 not two, but three SOG units to the Farm for the  
22 purpose of extracting and bringing back one prisoner.  
23 They were going to show Ms. Pepper who was running  
24 this prison and that's the way they chose to do it.

25 It turns out that there was, indeed,

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1 one inmate brought back, apparently filmed by  
2 Internal Affairs and there is nothing about that  
3 particular movement that's challenged here. But  
4 based on the evidence that I've discussed above, I  
5 find that the events as described by Mr. Feighan did,  
6 indeed, happen and that there was contemporaneous  
7 documentary evidence that the director of the Farm,  
8 Ms. Pepper, found out about it, that she took some  
9 steps, at least, to try to minimize if not eliminate  
10 its recurrence, and essentially was ignored or  
11 overridden, however you want to put it, by the  
12 uniformed authorities who sent down overkill to  
13 deliver that message to her.

14 I turn now, therefore, to the question  
15 of the plaintiff's injuries. I find the injuries are  
16 not particularly serious, but they did occur. I find  
17 that the concept of injury does not limit the  
18 recovery here because while that doctrine would  
19 preclude or at least significantly curtail the  
20 availability of damages for emotional or psychiatric  
21 impact, Mr. Feighan isn't seeking those damages  
22 anyway.

23 I certainly find, under the  
24 circumstances here, that this was not conduct on  
25 behalf of the SOG officers. In other contexts, such

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1 a use of force, if it had been to enforce an order  
2 that was being disobeyed or to restore some level of  
3 order from a disturbance in which an inmate was  
4 participating, it might have been. But under this  
5 circumstance, completely unprovoked and with no  
6 penological purpose, I find as I mentioned before  
7 that this was an excessive use of force. Once again,  
8 with relatively minor injuries which appear not to  
9 have persisted.

10 I find that these injuries do support  
11 an award of compensatory damages. I do not find,  
12 however, that this conduct, because at least in terms  
13 of its lack of intensity and brief nature, was not so  
14 egregious as to support an award of punitive damages  
15 under applicable legal standards.

16 Finally, although not every item of  
17 evidence has been discussed in this opinion/report  
18 all evidence presented to the Special Master was  
19 reviewed and considered.

20 And I recommend in this report that the  
21 district court enter an award of compensatory damages  
22 in the amount of three thousand five hundred dollars  
23 in Mr. Feighan's favor.

24 Counsel, that concludes my decisions  
25 for today, we'll reconvene at nine AM tomorrow.

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1 MR. ROSELLI: Thank you, your Honor.

2 MR. KAIGH: Thank you, judge.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: September 11, 2008

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